

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing Nos. B-11/08-532  
 ) & B-12/08-581  
 Appeal of )

# INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division, to sanction his Reach Up Financial Assistance (RUFA) benefits. The petitioner contends that the Department has violated his due process rights to adequate notice.

## DISCUSSION

The petitioner is a twenty-four-year-old man who is part of a three-person RUFA household.<sup>1</sup>

As part of the RUFA requirements, recipients are assigned to case managers to assess the recipients' work readiness and craft a Family Development Plan that sets out work goals, respective responsibilities regarding activities, work requirements, and schedules. W.A.M. § 2361.

In petitioner's case, the Department recognizes that petitioner does not have the capacity to work because he is

<sup>1</sup> Petitioner has recently been found disabled by a Social Security Administrative Law Judge. Once his Supplemental Security Income benefits start, petitioner will be deleted from the RUFA household.

disabled. The parties understand that the petitioner has psychological problems. Despite this understanding, the Department has required petitioner to attend meetings at the Department. A great deal of time and effort has been expended by the case managers to get the petitioner to meetings. It should be noted that the meetings are just check-ins.

On or about September 17, 2008, the Department sent petitioner and his wife a notice that they were being sanctioned. The notice read:

To [petitioner] (sanctioned participant): As of October 1, 2008 your Reach Up will be sanctioned because you:

- failed to comply with Reach Up requirements without good cause. (rule 2372)

The notice did not include any information as to the Reach Up requirement at issue and when and how petitioner failed to comply with his requirements. The sanction reduced petitioner's RUFA grant by \$75 per month.

In addition, the Department did not release petitioner's November RUFA grant for failure to attend a sanction meeting.

The petitioner filed a request for fair hearing on November 7, 2008. Prior to the December 11, 2008 hearing date, petitioner obtained legal representation. The December

11, 2008 hearing date was converted into a status conference. At the status conference, the issue of whether the September 17, 2008 notice was adequate was raised.

If the September 17, 2008 notice is found inadequate, all subsequent actions including the original sanction and the withholding of the November 2008 grant would be vitiated.

The cases were joined. Petitioner filed a Motion to Dismiss the Sanction arguing that the September 17, 2008 notice did not accord the petitioner due process. The record was held open until December 31, 2008 to allow the parties to brief whether the underlying sanction notice was defective.

#### ORDER

The petitioner's Motion to Dismiss the Sanction is granted.

#### REASONS

The United States Supreme Court recognized that welfare recipients have a property interest in their benefits and that due process attaches when the state takes action to terminate or reduce benefits. Goldberg v. Kelly, 397 U.S. 254 (1970). Due process includes advance written notice setting out the state's action, the reasons for that action,

and the right of the recipient to challenge the state's decision through a fair hearing. Goldberg, *supra*.

The Department has incorporated these principles in duly adopted regulations. W.A.M. §§ 2228, 2380 and 2380.1. The pertinent parts of these regulations read as follows:

2228        Notice of Decision

Applicants for and recipients of ANFC<sup>2</sup> shall be furnished, prior to implementation of any decision affecting their receipt of such aid or benefits, a written notice which:

1. Specifies the type of action to be taken, and explains the action with reference to dates, amounts, reasons, etc.

2380        Notice and Appeal

Reach Up Program participants and applicants have a right to notice (2380.1) ...of any actions the department takes that are adverse to the individual...

2380.1      Notice

The department shall provide all Reach Up Program applicants and participants with written notice of their appeal rights...each time they receive notice of an adverse action or decision by the department. The written notice shall include the reasons for the adverse action or decision, where and how appeals may be initiated, where a person may obtain a copy of the Human Service Board rules, and where to obtain legal assistance.

Based on a plain reading of the September 17, 2008

Notice and the above regulations, the Department did not

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<sup>2</sup> ANFC is the predecessor of RUFA.

provide sufficient notice to explain to petitioner the reasons for the sanction.

The Vermont Supreme Court has addressed the sufficiency of notice in administrative hearings. The core principle is that notice give the individual sufficient information so that the individual has an adequate opportunity to prepare and respond to the issues. In Re: Desautels Real Estate, Inc., 142 Vt. 326 (1983) (Petitioners received adequate notice because a narrative of the facts underlying the charges was attached to the complaint; petitioners were informed of the nature of the alleged misconduct.); In Re: Hot Spot, Inc., 149 Vt. 538 (1988) (The Liquor Control Board suspended a license for two violations. The Court remanded the case due to insufficient notice to petitioner of one of the charges. Neither the complaint nor the investigator's report included information regarding the violation found by the LCB). See also Braun, D.D.S. v. Bd. of Dental Examiners, 167 Vt. 110 (1997); In Re: Vermont Health Corp., 155 Vt. 457 (1990); and In Re: Petition of Twenty-Four VT. Utilities, 159 Vt. 363 (1992).

The underlying notice did not give petitioner an adequate opportunity to prepare and respond to the issues. Petitioner was not informed of the reasons for the sanction.

The notice did not inform petitioner what requirement(s) he violated, when the violation(s) occurred, or why good cause was not found.

It should be noted that the Department issued an Update to Reach Up Sanctions Instructions effective October 7, 2008 changing the notice to include a description of the action triggering the sanction and the date of the action.

Based on the foregoing, the September 17, 2008 Sanction Notice should be deemed defective. The petitioner's Motion to Dismiss the sanction is granted, and the Department should reimburse to petitioner any funds withheld as a result of the sanction actions. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4(D).

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